

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TROYLETTE BURTON, *et al.*,

Plaintiffs,

v.

MOISES FONSECA, *et al.*,

Defendants.

Case No. 3:20-cv-00190-ART-CLB

ORDER

Plaintiffs Troylette Burton, Thayer Burton, and Troylette Burton as Administrator of the Estate of Thayer Joseph Burton (collectively referred to as “Plaintiffs”) brings this action under 42 U.S.C. § 1983. Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Carla Baldwin (ECF No. 93), recommending the Court deny both Defendants’ motion for summary judgment, (ECF No. 84), and Plaintiffs’ motion for summary judgment, (ECF No. 85). Parties had until June 23, 2023 to file an objection. To date, no objection to the R&R has been filed. For this reason, and as explained below, the Court adopts the R&R, and will dismiss both motions for summary judgment.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge’s recommendation, the Court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.”) (emphasis

1 in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that
2 the Court “need only satisfy itself that there is no clear error on the face of the
3 record in order to accept the recommendation.”).

4 Because there is no objection, the Court need not conduct de novo review,
5 and is satisfied Judge Baldwin did not clearly err. Here, Judge Baldwin
6 recommends the Court deny both parties’ motions for summary judgment. With
7 regards to Count I: Eighth Amendment Failure to Protect, there are genuine
8 issues of material fact as to whether Defendants failed to take reasonable steps
9 to protect Burton from attack by Rowland, so Judge Baldwin recommends the
10 Court deny both motions for summary judgment. (ECF No. 93 at 9-10).
11 Concerning Count II: Eighth Amendment Supervisory Liability, Judge Baldwin
12 found that genuine issues of material fact exist as to whether Baca appropriately
13 allowed Rowland to be housed in general population, and thus she recommends
14 the Court deny both motions for summary judgment. (ECF No. 93 at 10). Judge
15 Baldwin also recommends maintaining supplemental jurisdiction over the state
16 law claims (Counts III and IV) because there are genuine issues of material fact
17 as to the federal claims. (ECF No. 6 at 11-12). With regards to qualified immunity,
18 Judge Baldwin determined that the right of inmates to be protected from violence
19 at the hands of inmates is clearly established, so she held that Defendants are
20 not entitled to qualified immunity as to the Eighth Amendment failure to protect
21 claim. (ECF No. 93 at 13). The Court agrees with Judge Baldwin. Having reviewed
22 the R&R and the record in this case, the Court will adopt the R&R in full.

23 It is therefore ordered that Judge Baldwin’s Report and Recommendation
24 (ECF No. 93) is accepted and adopted in full.

25 It is further ordered that Defendants’ motion for summary judgment, (ECF
26 No. 84), be denied.

27 It is further ordered that the Plaintiffs’ motion for summary judgment,
28 9ECF No. 85), be denied.

1 The Clerk of Court is directed to administratively close this case.

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3 DATED THIS 21st Day of July 2023.

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6 ANNE R. TRAUM
7 UNITED STATES DISTRICT JUDGE
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